

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MONTANA**

FILED

APR 23 2018

Clerk, U S District Court
District Of Montana
Billings

Petition for Warrant for Offender Under Supervision

Name of Offender: Nicholas John Montano

Docket Number: 0977 1:10CR00155-001

Name of Sentencing Judicial Officer: THE HONORABLE RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE

Date of Original Sentence: 02/02/2012

Original Offense: 18:922G.F; UNLAWFUL TRANSPORT OF FIREARMS - ETC.

Original Sentence: 78 months custody, 36 months supervised release

Date of Revocation: 02/24/2017

Revocation Sentence: 18 months Bureau of Prisons; 18 months Supervised Release

Type of Supervision: Supervised Release

Date Supervision Commenced: 03/09/2018

Assistant U.S. Attorney: Chad Spraker
901 Front St, Suite 1100, Helena, MT 59626, (406) 457-5120

Defense Attorney: Dave Merchant
Federal Defenders Office, 2702 Montana Ave, Suite 101, Billings, MT 59101, (406) 259-2459

PETITIONING THE COURT

Background

On 02/02/2012, the defendant appeared for sentencing before THE HONORABLE RICHARD F. CEBULL, UNITED STATES DISTRICT JUDGE, having been found guilty by jury trial of the offenses of 18:922G.F; UNLAWFUL TRANSPORT OF FIREARMS - ETC.. The offense involved the defendant being in possession of a stolen Beretta, model 92FS, 9mm semi-automatic pistol and ammunition. At the time of arrest, the defendant was uncooperative and under the influence of alcohol. An inspection of the vehicle the defendant was traveling in later uncovered drug paraphernalia and prescription drugs. The defendant was sentenced to 78 months custody, followed by 36 months supervised release.

On 02/24/2017, the defendant's supervised release was revoked due to alcohol consumption and being charge with DUI and Criminal Possession of Dangerous Drugs. He was sentenced to 18 months custody followed by 18 months supervised release. The defendant began the current term of supervised release on 03/09/2018.

A formal noncompliance hearing was held with the defendant on 03/30/2018 to address violations one through six listed below. Considering the defendant was already enrolled in substance abuse testing as well as individual counseling to address co-occurring substance abuse and mental health disorders, he was informed that any further violations to his conditions of release would result in a petition to revoke his supervised release being filed with the court.

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On 04/16/2018, a report on offender under supervision was submitted to inform the court of the violations as well as the recommended action by the United States Probation Office. On 04/19/2018, the Honorable Susan P. Watters, United States District Court Judge signed the report indicating she agreed with the recommendation of the probation office. Since that time, the defendant has failed to follow the instructions of the probation officer and tested positive for alcohol use.

The probation officer believes the offender has violated the following condition(s) of supervision:

<u>Violation Number</u>	<u>Nature of Noncompliance</u>
1	<p>Special condition: The defendant shall abstain from the consumption of alcohol and shall not enter establishments where alcohol is the primary item of sale.</p> <p>On 03/12/2018, the defendant tested positive for alcohol consumption on a hand-held testing device. The defendant subsequently signed an admission of use form acknowledging he consumed red wine on 03/09/2018, the day he released from custody.</p>
2	<p>Special condition: The defendant shall participate in a program for mental health treatment as deemed necessary by the United States Probation Officer, until such time as the defendant is released from the program by the probation officer. The defendant is to pay part or all of the cost of this treatment, as directed by the United States Probation Office.</p> <p>On 03/20/2018, the defendant failed to report for his individual treatment session for the dual diagnosis of co-occurring substance abuse and mental health disorders. The defendant was not previously excused and offered no justifiable reason for not attending the session.</p>
3	<p>Standard condition: You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.</p> <p>On 03/12/2018, the defendant was instructed to report to the United States Probation Office on 03/23/2018. The defendant failed to report as instructed.</p>
4	<p>Mandatory condition: You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.</p>

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On 03/30/2018, the defendant was instructed to report to the probation officer due to missing a scheduled treatment appointment the previous day. The defendant submitted a urine sample which tested positive for THC. The defendant subsequently signed an admission of use form acknowledging he smoked marijuana on 03/28/2018.

- 5 **Special condition:** The defendant shall abstain from the consumption of alcohol and shall not enter establishments where alcohol is the primary item of sale.

On 03/30/2018, the defendant submitted a urine sample which tested positive for alcohol. The defendant acknowledged he consumed multiple cans of Bud Light beer on 03/28/2018.

- 6 **Special condition:** The defendant shall participate in a program for mental health treatment as deemed necessary by the United States Probation Officer, until such time as the defendant is released from the program by the probation officer. The defendant is to pay part or all of the cost of this treatment, as directed by the United States Probation Office.

On 03/29/2018, the defendant failed to report for his individual treatment session for the dual diagnosis of co-occurring substance abuse and mental health disorders. The defendant was not previously excused and offered no justifiable reason for not attending the session.

- 7 **Special condition:** The defendant shall abstain from the consumption of alcohol and shall not enter establishments where alcohol is the primary item of sale.

On 04/19/2018, the defendant provided a urine sample that teste positive for alcohol. The defendant subsequently signed an admission of use form acknowledging he consumed Corona Beer on 04/17/2018.

- 8 **Standard condition:** After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

On 04/18/2018, the undersigned officer phoned the defendant at approximately 4:00 p.m. and in instructed him to be at his residence by 5:00 p.m. and remain there until the undersigned officer arrived to conduct and initial home inspection. The defendant indicated there would be no issue with that time frame. The undersigned officer arrived at the defendant's residence at approximately 6:15 p.m. and the defendant was not present. The defendant's mother was at the residence and stated the defendant had a job interview that evening and was not home.

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AFFIDAVIT AND PETITION PRAYING THAT THE COURT WILL ORDER A WARRANT BE ISSUED

In conformance with the provision of 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge. Based on the information presented that the offender has violated conditions of supervision, I am petitioning the Court to issue a warrant.

Reviewed

By:

Brian R Farren

Brian R Farren
Supervising United States Probation
Officer

Date: 04/23/2018

Respectfully Submitted

By:

Matt Shea

Matt Shea
United States Probation Officer

Date: 04/23/2018

ORDER OF COURT

I find there is probable cause to believe the offender has violated conditions of supervision, supported by the above affirmation given under penalty of perjury. The Court orders the issuance of a warrant. Considered and ordered this 23rd day of April, 2018, and ordered filed **UNDER SEAL** and made a part of the records in the above case.

IT IS FURTHER ORDERED that upon notification to the Clerk of Court's Office that the above named Defendant has been taken into custody, the Petition for Warrant or Summons for Offender Under Supervision shall be unsealed.

Susan P. Watters

Susan P Watters

United States District Judge

4-23-2018

Date